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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/678,304	10/06/2003	Naoki Isogai	WEN-0023	4127

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RADER FISHMAN & GRAUER PLLC
LION BUILDING
1233 20TH STREET N.W., SUITE 501
WASHINGTON, DC 20036

EXAMINER
PINKNEY, DAWAYNE

ART UNIT	PAPER NUMBER
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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	**Application No.** 10/678,304	**Applicant(s)** ISOGAI ET AL.
	Examiner DaWayne A. Pinkney	**Art Unit** 2873

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *21 June 2007*.

2a)☐ This action is **FINAL**. 2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-5, 7-10, and 12-20* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☒ Claim(s) *1-5 and 7-10* is/are allowed.

6)☒ Claim(s) *12-15 and 17-20* is/are rejected.

7)☒ Claim(s) *16* is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☒ The drawing(s) filed on *06 October 2003* is/are: a)☒ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☒ All b)☐ Some * c)☐ None of:

1.☒ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)

2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)

3) ☒ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date *06/21/2007*.

4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ .

5) ☐ Notice of Informal Patent Application

6) ☐ Other: _____.

DETAILED ACTION

Continued Examination Under 37 CFR 1.114

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 06/21/2007 has been entered.

Information Disclosure Statement

2. The information disclosure statement (IDS) submitted on 06/21/2007 was considered by the examiner.

Claim Rejections - 35 USC § 103

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

4. Claims 12-15, and 17-20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kawamura (US 5, 706, 072) in view of Fujeida (US 6, 079, 828), further in view of Katsurgi (US 5, 469, 233).

The cited primary reference, Kawamura discloses, an ophthalmic apparatus for examining an eye to be examined (Column 1, lines 5-12), the apparatus comprising:

a transparent window for separating an inside and an outside of the apparatus (Fig. 1, 3 and Col. 3, Line 65);

an examination light projecting optical system, having a first light source and being arranged on the inside, for projecting examination light onto the eye which is at an examination position in front of the window on the outside through the window (Col. 2, Lines 26-47);

an examination light receiving optical system, having a photodetector and being arranged on the outside, for photo receiving the examination light reflected from the eye which is at the examination position through the window (Col. 4, Lines 12-15);

abnormal reflection detecting means for comparing an output signal level from the photodetector or the image pickup element when the first light source or the second light source is lit in a state where an reflection object is not placed in front of the window on the outside, with a reference level, and detecting abnormal reflection of the examination light or the alignment index light at the window by checking presence of the output signal level beyond the reference level (Col. 2, Lines 15-25); and

informing means for informing an operator of a detection result by the abnormal reflection detecting means (Col. 3, Lines 8-10).

Kawamura fails to disclose an alignment index light projection optical system, having a second light source and being arranged on the inside, for projecting alignment index light onto the eye which is at the examination position through the window, and an alignment index light receiving optical system, having an image pickup element and being arranged on the inside, for photo-receiving the alignment index light reflected from the eye at the examination position through the window.

Fujieda teaches an alignment index light projection optical system, having a second light source and being arranged on the inside, for projecting alignment index light onto the eye which is at the examination position through the window (Col. 5, Lines 2-8), and an alignment index light receiving optical system, having an image pickup element and being arranged on the inside, for photo-receiving the alignment index light reflected from the eye at the examination position through the window (Fig. 1, 11).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to include an alignment means at taught by Fujieda, with the eye examination device of Kawamura, since as shown by Fujieda, such alignment means are commonly included in an eye examination device in order to ensure proper operation of the device by properly aligning the eye.

The combination of Kawamura in view of Fujeida disclose and teach as set forth above.

The combination does not teach the abnormal reflection detecting means which is activated in a soil detection mode, not a measurement mode, for comparing an output signal level of the photodetector or the image pickup element when the first light source or the second light source is lit in a state where the eye is not placed in front of the window on the outside.

The added tertiary reference, Katsurgi teaches, that in an ophthalmic apparatus having a transparent window, an examination light projecting optical system, an examination light receiving optical system, an alignment index light projection optical system, and an alignment index light receiving optical system that it would be desirable to include an abnormal reflection detecting means which is activated in a soil detection mode, not a measurement mode, for comparing an output signal level of the photodetector or the image pickup element when the first light source or the second light source is lit in a state where the eye is not placed in front of the window on the outside (Column 1, lines 36-44, and Column 3, lines 4-30) for the purpose of this warns an operator that the instrument is not functioning properly and maintenance needs to be performed (Column 3, lines 25-30).

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to use the abnormal reflection detecting means which is activated in a soil detection mode, not a measurement mode, for comparing an output signal level of the photodetector or the image pickup element when the first light source or the second light source is lit in a state where the eye is not placed in front of the window on the outside as taught by the ophthalmic apparatus of Katsurgi in the combination of Kawamura and Fujeida since Katsurgi teaches it is well known to use these features in an ophthalmic apparatus for warning an operator that the instrument is not functioning properly and maintenance needs to be performed (Column 3, lines 25-30).

Regarding **claims 13-14**, Kawamura, Fujeida, and Katsurgi disclose and teach as set forth above, and Kawamura further discloses, the abnormal reflection detecting means obtains a difference between the output signal level of the photodetector or the image pickup element when the first light source or the second light source is lit in the state where the reflection object is not placed in front of the window on the outside and an output signal level of the photodetector or the image pickup element when the first light source or the second light source is not lit in the state where the reflection object is not place in front of the window on the outside, and compares the obtained difference with the reference level (Col. 1,Lines 36-46), and the photodetector includes an image pickup element (Fig. 1, 10).

Regarding **claim 15**, Kawamura, Fujeida, and Katsurgi disclose and teach as set forth above, and Fujieda further teaches a rotation unit which rotates the first light source or the second light source and the photodetector or the image pickup element in synchronization about an optical axis (Col. 4, Lines 37-57) for the purpose of a rotation unit is commonly included in an eye examination device in order to keep the photodetector conjugate to the eye.

Regarding **claim 18**, Kawamura discloses, an ophthalmic apparatus for examining an eye to be examined (Column 1, lines 5-12), the apparatus comprising:

a transparent window for separating an inside and an outside of the apparatus (Fig. 1, 3 and Col. 3, Line 65);

an examination optical system arranged on the inside, for projecting examination light onto the eye which is at an examination position in front of the window on the outside through the window and photo-receiving the examination light reflected from the eye which is at the examination position through the window (Column 2, lines 26-47, and Column 4, lines 12-15);

a detection light projection optical system for projecting detection light onto the eye which is at the examination position through the window (Column 2, lines 26-47, and Column 4, lines 12-15);

abnormal reflection detecting means for comparing an output signal level from the photodetector or the image pickup element when the first light source or the second light source is lit in a state where an reflection object is not placed in front of the window on the outside, with a reference level, and detecting abnormal reflection of the examination light or the alignment index light at the window by checking presence of the output signal level beyond the reference level (Col. 2, Lines 15-25); and

informing means for informing an operator of a detection result by the abnormal reflection detecting means (Col. 3, Lines 8-10).

Fujeida teaches, an alignment optical system arranged on the inside, for projecting alignment index light onto the eye which is at the examination position through the window and photo-receiving the alignment index light reflected form the eye which is at the examination position through the window (Column 5, lines 2-8, and Figs. 1 and 11).

Furthermore, Katsurgi teaches, an abnormal reflection detecting means which is activated in a soil detection mode, not a measurement mode, for comparing an output signal level of the photodetector or the image pickup element when the first light source or the second light source is lit in a state where the eye is not placed in front of the window on the outside (Column 1, lines 36-44, and Column 3, lines 4-30) for the purpose of this warns an operator that the instrument is not functioning properly and maintenance needs to be performed (Column 3, lines 25-30).

Regarding **claim 19**, Kawamura, Fujeida, and Katsurgi disclose and teach as set forth above, and Kawamura further discloses, the ophthalmic apparatus according to claim 18, wherein the detection light projection optical system is included in the examination optical system or the alignment optical system, and the detection light is the examination light or the alignment index light (Column 2, lines 26-47, and Column 4, lines 12-15).

Regarding **claims 17 and 20**, Kawamura, Fujeida, and Katsurgi disclose and teach as set forth above, and Katsurgi further teaches that in an ophthalmic apparatus having a transparent window, an examination light projecting optical system, an examination light receiving optical system, an alignment index light projection optical system, and an alignment index light receiving optical system that it would be desirable for the abnormal reflection detecting means is activated by being placed in the soil detection mode by turning on the apparatus (Column 1, lines

36-44, and Column 3, lines 4-30) for the purpose of this warns an operator that the instrument is not functioning properly and maintenance needs to be performed (Column 3, lines 25-30).

Allowable Subject Matter

5. Claim 16 is objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

6. The following is a statement of reasons for the indication of allowable subject matter: none of the prior art alone or in combination disclose or teach of the claimed combination of limitations to warrant a rejection under 35 USC 102 or 103. Specifically, in reference to dependent claim 16, none of the prior art either alone or in combination disclose or teach of the claimed ophthalmic apparatus specifically including, as the distinguishing feature(s) in combination with the other limitations the claimed "mobile lens for changing a position conjugate with the photodetector or the image pickup element."

Response to Arguments

7. Applicant's arguments with respect to claim 12 have been considered but are moot in view of the new ground(s) of rejection.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to DaWayne A. Pinkney whose telephone number is (571) 270-1305. The examiner can normally be reached on Monday-Thurs. 8 a.m.- 4:30 p.m..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Ricky Mack can be reached on (571) 272-2333. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

07/09/2007
DAP

Scott J. Sugarman
Primary Examiner